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Fifty-sixth session

SUMMARY RECORD OF THE 1479th MEETING

Held at Headquarters, New York,
on Wednesday, 20 March 1996, at 3 p.m.

Chairman: Mr. AGUILAR

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The meeting was called to order at 3.25 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Fourth periodic report of Spain (CCPR/C/95/Add.1; HRI/CORE/1/Add.2/Rev.2)

1. At the invitation of the Chairman, Mr. Ibarra, Mr. Zurita, Mr. Borrego and Mr. Rodriguez (Spain) took places at the Committee table.

2. Mr. IBARRA (Spain) said that the Spanish parliament had recently taken decisive steps to ensure fulfilment of the constitutional provisions calling for the establishment of an advanced democratic society. That society was to be based on respect for the Constitution and the Government would be obligated to create a favourable environment and remove the obstacles to the enjoyment of genuine freedom and equality by both individuals and groups. In implementation of those goals, the legislature had enacted a new Penal Code to replace the outmoded one, which had been last revised in 1973.

3. The new Code completely revamped the system of penalties, which were now geared towards the social rehabilitation of convicted persons. It also sought to achieve an appropriate balance between the principle of minimum intervention, which was justified by the obligation of the public authorities to protect human rights, particularly in an increasingly complex society. The new Code therefore provided penalties for new forms of criminal behaviour and attached special importance to the protection of fundamental rights. Finally, the new Code sought to promote genuine equality, as required by the Constitution, by establishing mechanisms for protection against any activity that was discriminatory or detrimental to freedom and equal treatment.

4. Other legislative measures had been adopted to establish human rights standards and to regulate Spain's policies in the field. The organic law of 15 January 1996 for the legal protection of minors had sought to identify and strengthen the fundamental rights enshrined in the Constitution, particularly those concerning social groups that needed special protection from the public authorities. The law took into account the constitutional mandate to ensure the social, economic and legal protection of minors as well as the provisions of the Convention on the Rights of the Child. Its two guiding principles were, firstly, its recognition of the supremacy of the interest of minors by promoting their integration into the family and society and by redressing situations that were prejudicial to their personal development, and, secondly, the attribution of responsibility to the public authorities for preventing and redressing situations which posed a risk to minors and ensuring that appropriate services in such areas as guardianship, adoption and custody were available to them.

5. The law of 11 December 1995 on assistance to victims of violent crimes and crimes against sexual freedom was intended to create a system of public assistance for the victims of such crimes. The financial assistance provided by the State to victims of violent crimes resulting in death or serious physical or psychological injury was not a substitute for the compensation for which the party guilty of the offence was liable. It merely represented an attempt by the

State to display solidarity with the victims of violent crimes. That principle of solidarity was also behind other forms of assistance, including material, physical or psychological help for victims and more considerate treatment of victims by the police and judicial authorities in order to protect their privacy and dignity.

6. For its part, the law of 10 January 1996 on free legal aid brought up to date the traditional entitlement of indigent citizens to the services of an attorney. The rights of all to equality before the law, legal protection and legal defence were now more effectively protected as a result of the creation of new mechanisms for free professional assistance for the most disadvantaged groups.

7. On the question of the death penalty, the Constitution of 1978 recognized the fundamental right of all to life and to physical and moral integrity and provided for the abolition of the death penalty, except as provided for by military criminal law in time of war. In keeping with the spirit and purpose of the Second Optional Protocol to the Covenant, the organic law of 27 November 1995 also abolished the death penalty provided for by military criminal law in time of war.

8. Parliament had also adopted positive measures to promote equality of the sexes, including subsidies to employers who recruited women in job sectors in which the latter were underrepresented, job training programmes, and the revision of educational material to combat sexual stereotypes. The Constitutional Court had upheld the constitutionality of the principle of affirmative action where justified, including measures to compensate for the traditional treatment of women as inferiors in the social sphere and in the labour market.

9. The right to education, which was provided under the Constitution for all Spaniards and foreigners resident in Spain, was another area in which the progress achieved in the fight against discrimination and inequality could be measured. Both the State and Autonomous Communities were competent to take action to ensure that the benefits of education were enjoyed by all citizens without distinction of any kind. The organic law of 3 October 1990 on the general organization of the educational system had laid down the guiding principles and basic standards for the adoption by educational authorities of affirmative measures to compensate for inequalities in education at the kindergarten, primary and secondary levels.

10. For its part, the organic law of 20 November 1995 on the participation, evaluation and administration of educational institutions had identified students with special needs, distinguishing between those whose special needs derived from disabilities and behavioural problems and those whose needs derived from deprived social or cultural environments. Special attention was paid to such groups and to students being schooled by distance learning methods for medical or other reasons.

Constitutional and legal framework within which the Covenant is implemented, state of emergency, non-discrimination, protection of the family and children, and rights of persons belonging to minorities (articles 2, 3, 4, 23, 24, 26 and 27 of the Covenant) (section I of the list of issues)

11. The CHAIRMAN read out section I of the list of issues under that heading as follows: (a) information on whether, in the period under consideration, there were any cases in which the provisions of the Covenant had been directly invoked in the courts or referred to in judicial decisions; (b) clarification of the procedures for the implementation of any views adopted by the Committee under the Optional Protocol; (c) information on the impact of the various measures referred to in paragraphs 21 and 22 of the report adopted to reinforce protection against racial discrimination in a context marked by the re-emergence of "such theories and behaviour" and clarification of whether the draft of the new Penal Code, which broadened the array of enforcement measures in those circumstances had already been adopted; (d) information on whether any specific measures had been taken to promote the access of women to political life and thus overcome their underrepresentation in that area (para. 18 of the report); (e) information on the difficulties which had impaired, and continued to impair, the functioning of the system of Autonomous Communities and on the steps that had been taken to try to overcome them (para. 7 of the report); (f) details of the practical measures taken to guarantee the effective exercise of the rights, pursuant to article 27 of the Covenant, of persons belonging to minorities; (g) information on the measures taken to disseminate information on the rights set forth in the Covenant and the Optional Protocol; (h) details of the extent to which the public had been informed of the consideration of the report of the Human Rights Committee.

12. Mr. BORREGO (Spain), referring to section I (a), said that the Covenant formed part and parcel of Spain's domestic law and its provisions had been directly invoked 144 times in decisions of the Supreme Court involving administrative disputes, labour and social law. Also, in recent years, Spain's Constitutional Court had directly invoked the Covenant in 61 of its rulings. It had also been invoked at the lower levels of the judicial system.

13. To cite specific examples: in 1993, the First Chamber of the Supreme Court had invoked article 14(5) of the Covenant in a civil case. Article 17 had been invoked in 1994 by the Second Chamber of the Supreme Court in a case in which a parent had revoked a gift to a daughter who had left home to live with a man of another race.

14. Turning to section I (b), he said that the Spanish Government took very seriously into account the views adopted by the Committee under the Optional Protocol. In case of a violation of the Covenant in the form of harm to an individual as the result of the normal operation of the administration of justice system, article 121 of the Constitution of Spain, which provided for compensation in such cases at State expense would come into play. If the violation occurred in another sphere, article 106(2) of the Constitution provided that private individuals were entitled to compensation for damages inflicted on their property or persons through the improper functioning of Spanish public services, except in cases of force majeure.

15. Mr. IBARRA, responding to the question in section I (c) on measures referred to in paragraphs 21 and 22 of the report to reinforce protection against racial discrimination, said that the measures announced in paragraphs 21 and 22 and planned for 1994 had become a reality. The Penal Code of 1995 introduced the notion of the violation of human rights and of freedoms guaranteed by the Constitution. Articles 510, 511 and 512 prohibited incitement to discrimination on the grounds of race, anti-Semitism, ideology, religion, beliefs, sex, sexual orientation, national origin, illness, or handicap as well as discrimination against or inflammatory statements about any groups or associations.

16. The Code also prohibited discrimination against any physical or legal person or persons and refusal to provide services by any public or private sector institution if such refusal was motivated by discrimination. The Code, in its chapter on crimes against freedom, article 170, included the crime of threats against any ethnic group. Chapter 10 on the right to privacy prohibited revealing details of any person's personal life without consent, or of his/her ideology, beliefs, religion, health, sex life or racial origin (art. 197, para. 5). Chapter 15, on worker's rights, in article 314 prohibited serious discrimination in the public or private workplace for reasons of ideology, religion, belief, ethnicity, race, nationality, sex, sexual orientation, family situation or handicap. Chapter 24 concerning crimes against the international community, besides genocide mentioned in article 307, paragraph 1, also included the dissemination by any means of ideas or doctrines which tended to deny or justify genocide or rehabilitate regimes or institutions which indulged in such practices (art. 707, para. 2). Chapter 1, article 22, case 4, also provided that the seriousness of a crime would be aggravated if it had been motivated by racism, anti-Semitism, discrimination on the basis of religion, belief, ethnicity, race, sex, sexual orientation, illness, or handicap.

17. The Penal Code of 1995 also reflected the situation in the European Union when, during the Spanish presidency in the second half of 1995, a proposal was put forward for common action to fight racism. The Ministers of the Interior of the European Union were meeting in Brussels to establish an agenda for arriving at a consensus on common action by the international legal community to cooperate in fighting racism and xenophobia.

18. The first aspect of that common action would be for each Government to enact laws condemning the five racist and xenophobic behaviours, namely, incitement to discrimination, violence or racial hatred, public apology motivated by racism or xenophobia for crimes against humanity as defined by the relevant international instruments, public rejection of article VI of the International Military Tribunal in the annex to the London Agreement of 1945 on racist or xenophobic grounds, the distribution of materials of a racist or xenophobic character, and participation in groups whose practices incited to discrimination or violence or religious, racial or ethnic hatred. Those behaviours would be regarded as crimes against humanity and, to avoid conflicts in jurisdiction, extradition would be facilitated in such cases.

19. As a second step, the countries of the European Union would improve legal cooperation, promote the international transfer of information on offences charged, facilitate the confiscation of racist or xenophobic materials, and

reinforce legal assistance among States. The five behaviours cited could not be dismissed as infractions or political crimes. An information network would be set up to assist in investigating and prosecuting the offenders.

20. Such measures would lead to further progress in the international fight against racist and xenophobic behaviour and that common action would be the first example of federal European legislation. The two measures he had described were the most representative of the work undertaken by Spain in that period.

21. Mr. ZURITA, responding to the question in section I (d) concerning the promotion of access of women to political life, pointed out that the greatest social change in Spain over the preceding 10 years had been the change in the status of women. Certainly, the international conferences on the status of women in Nairobi and Beijing had played an important role. In 1989 the first plan for the promotion of equal opportunity for women had been launched with the intention of implementing policies to promote the involvement of women in the public sector. From 1993 to 1995 a second plan had used the lessons learned during the application and development of the first plan, to further develop the role of women. Whereas the first plan had emphasized quantitative changes, the second emphasized qualitative changes to advance the role of women and to increase their participation in the cultural, political and working life of the country. The second plan had further advanced the participation of women in society and politics and promoted their access to decision-making positions. Although progress had certainly been gradual, it had been real and women were increasingly present in decision-making at the political, economic and social levels, nationally, locally and in the autonomous regions.

22. Until 1989, there had been very few women deputies in parliament but the legislative elections of 1989 had more than doubled the number from 23 to 51, or 14 per cent of the total, and in 1993 the number rose to 55 or 15.7 per cent of the total. The elections of 3 March 1996 had raised the total to 77 or 22 per cent.

23. In high-level government posts the number of women had risen to 12.9 per cent of the total in 1994, 5 per cent more than in 1990 and 8 per cent more than in 1985. Three ministers in the Cabinet were women - and there were five women Secretaries of State, representing a total of 13.9 per cent of all posts in the Government ministries.

24. Mr. IBARRA, referring to the question in section I (e) concerning the system of autonomous communities, stated that the territorial distribution of political power in Spain was based on two structures, the autonomous communities and local administrations. In 1995 the first organizational law had confirmed the autonomy of the city of Ceuta and the second organic law had confirmed the autonomy of the city of Melilla. The enactment of that law had completed the organization of political power in Spain into 17 autonomous communities and 2 autonomous cities and had concluded the process begun in 1979 with the granting of autonomous status to the Basque country and to Catalonia. Each community had participated in the process voluntarily by adopting statutes and organizational laws within the framework of the decentralization provided for by article VIII of the Constitution.

25. An important document reflecting the debates in the Senate on the status of the autonomous regions had been provided to the Committee and the President of the Government, summing up the facts concerning the process of decentralization, had said that over the preceding 15 years, the institutions of the autonomous regions had been consolidated, their responsibilities for the welfare of their citizens had been defined, and 1,200 transfer of power decrees had been promulgated and some 15,000 civil servants transferred. With the help of the constitutional court, the competencies of the various levels of Government had been delimited, resulting in a major reduction in tension. The problems created by so rapid a process of decentralization had been faced in a spirit of cooperation and the autonomous communities' share of public spending had gone from 3.5 per cent in 1984 to 25 per cent in 1993.

26. Further measures had been taken to develop the role of the autonomous communities in accordance with article 43 of the Constitution and to convert the Senate into the chamber of regional territorial representation in accordance with the findings of the General Commission on the Autonomous Territories. Finally, in 1995, 162 new transfers had been made from the State to the autonomous communities, double the number of transfers of powers made in 1993.

27. Referring to the question in section I (f) concerning measures guaranteeing the rights of minorities, he stated that the only minority in Spain, as defined in the Covenant, were the Gypsy people. Spain was a socially and culturally pluralistic society with many nationalities living in the autonomous territories. As a result of increased immigration, Spain for the first time had become a net importer of population.

28. The first problem concerning the Gypsy minority was to define who was a member since article 16 of the Constitution prohibited any reference to ethnicity in census-taking. Consequently, the only figures available were unofficial and put the Gypsy population at approximately 410,000 persons. A programme consisting of some 1,135 separate measures had been set up to integrate the Gypsy minority and there were some 32 Gypsy-related associations. A special Follow-up Commission and the Government's Consultative Committee had representatives from Gypsy organizations. Specific policies and measures had been generated by public administrations to promote the participation of Gypsies. Efforts had been made to improve their access to the workplace, to schooling and to keep Gypsy children in school for longer periods of time. Access to the health system and housing for Gypsy women had been improved. The Gypsy people themselves had been encouraged to participate in Gypsy-oriented associations and the public authorities had sought to promote a positive image and greater public awareness of Gypsy culture.

29. Those efforts had been strengthened by three other campaigns: Democracy and Equality, Youth against Intolerance, and the European Youth Campaign against Racism, Xenophobia, Anti-Semitism and Intolerance. Since 1995 the legal system had instituted special training for police services to promote greater awareness of cultural and ethnic groups. Measures had been implemented to compensate for inequalities in education, one of which expressly targeted the children of socially disadvantaged ethnic and cultural minorities.

30. Responding to the question in section I (g) concerning information on the Covenant and the Optional Protocol, Mr. Borrego stated that the rights embodied in the Covenant and the Protocol had been published in the Official Bulletin and were well known to all the parties concerned. They had been incorporated in Spanish legislation and a document on the question had been annexed to the report. Moreover, those rights were studied at all levels of both general and specialized education, within the framework of fundamental rights. In addition, special courses were available in law schools so that legal professionals would be fully aware of human rights and the participation rate in those courses was very high. Indeed, proof of awareness of human rights was the fact that they were often invoked before the courts and in appeals to the Human Rights Committee.

31. Concerning the question in section I (h), on public awareness of the report to the Human Rights Committee, he stated that the presence of a television crew and the fact that the report was receiving wide attention in the national media were proof that in Spain, where freedom of the press was a reality, the public was well informed of the proceedings of the Human Rights Committee.

32. Mr. POCAR said that Spain might be unique among States parties in that so many of its court decisions made direct reference to the Covenant. He would welcome additional information on Spanish jurisprudence: was the Covenant invoked when domestic law did not cover a particular situation or was it used to aid in interpreting domestic law?

33. Mr. PRADO VALLEJO commended the Government of Spain on the recent abolition of the death penalty. With regard to non-discrimination, he would like to learn what concrete measures had been taken to address the situation described in paragraphs 20, 21 and 22 of the report. While he commended the excellent efforts made to establish the system of Autonomous Communities, he would welcome more details on how the problems had actually been solved.

34. The independence of the judiciary was of fundamental importance to the protection of human rights, but the system of electing judges by a three-fifths majority of the parliament could introduce a political element into the process. He would like to know what was being done to ensure that the independence of the judiciary was preserved.

35. With reference to article 27 of the Covenant, more information was needed about the situation of linguistic or racial minorities in Spain and about access by the Gypsy minority to the courts and to Covenant protections.

36. Mr. BRUNI CELLI said that the new realities of the global economy had made Spain a destination country for immigration, and he would like to know whether there was a systematic Government policy on immigration. There had been reports of police brutality against immigrants; information was needed on measures to avoid such violence and whether the police officers involved had been punished. Any available statistics on the number of immigrants would be helpful in understanding the magnitude of the problem. Information regarding safeguards for immigrants in the area of salary and working conditions would also be helpful.

37. Ms. MEDINA QUIROGA, noting that most court cases in which the Covenant had been invoked directly had been heard before the Supreme Court, wondered about the status of the Covenant in the lower courts. She would like to learn more about the mechanisms for implementing follow-up to Committee views on communications received from individuals. She also asked whether non-governmental and human rights organizations had been invited to comment on or participate in the preparation of the report.

38. The penalties mentioned in paragraph 108 of the report for failure to pay child support should be clarified, as they appeared to be incompatible with the prohibition of imprisonment for inability to fulfil a contractual obligation under article 11 of the Covenant.

39. Mr. LALLAH said that it would be interesting to know whether the Committee's general comments and the Optional Protocols to the Covenant were also invoked before Spanish courts. He, too, would like to hear more about procedures for the implementation of Committee views on communications. The Government should elaborate on the current situation of the Basque separatist movement and its impact, if any, on the implementation of the Covenant.

40. Noting that paragraphs 21 and 22 of the report mentioned instances of discrimination on a number of grounds, including race and ethnic origin, he would be interested to learn what races had encountered such problems in Spain and the extent of those problems. The situation of the Basque people had not been dealt with in the report and he wondered if the delegation might discuss its views of the Basque problem.

41. Mr. KLEIN said that while the report highlighted legal instruments that could be used to combat the problems of xenophobia and racial discrimination, legal means, while necessary, were not sufficient. He asked specifically whether the Spanish Government had established any educational programmes in schools or universities or for civil servants.

42. With reference to paragraph 135 of the report, he inquired whether in cases where children were born out of wedlock, to single parents or couples living together, both natural parents had parental authority or if it was reserved for mothers only.

43. Mr. ANDO, referring to paragraph 21, said that the provision which stipulated that a criminal would receive a stiffer penalty if he committed an offence against an individual for reasons relating to the victim's ethnic or national origin could in itself be discriminatory vis-à-vis the perpetrator of the crime, and asked that the representative of Spain comment on that provision.

44. Ms. EVATT said that the report referred to a number of cases in which courts at all levels had made references to the Covenant. In future it would be ideal to include in the report both the decision and the relevance of the Covenant in making the decision.

45. While she acknowledged that there was greater equality for women in Spain than in the past, she asked whether the Government had devised any practical measures to encourage greater participation of women in political life.

46. She agreed with previous speakers that legislation was not enough to combat problems of racial discrimination and would also be interested in learning if the Government had established any programmes to sensitize people against intolerance, xenophobia and racial discrimination.

47. Finally, she inquired as to whether any non-governmental organizations had been involved in the process of preparing the fourth periodic report.

48. Mr. BÁN commended the representative of Spain for an excellent report and welcomed the seriousness with which the reporting country had regarded the views adopted following the review of the third periodic report. With regard to legislation introduced in January of 1996 regarding the legal protection of minors, he wondered whether the concerns expressed by the Committee on the Rights of the Child had been taken into consideration when the legislation was drawn up. Those concerns related to the rights of parents to administer punishment reasonably and in moderation.

49. With regard to problems of racial discrimination which were discussed in paragraphs 21 and 22 of the report, he asked whether the introduction of new provisions of the kind discussed in those paragraphs had been preventative in nature or whether there already existed a number of cases which had led to the introduction of the new legislation.

50. Mr. KRETZMER sought clarification the discriminatory distinction made between citizens and non-citizens in Spain. He referred specifically to article 13 and article 14 of the Spanish Constitution, which specified that only Spaniards were entitled to certain rights and were equal before the law. Secondly, he asked how autonomous communities which were provided for in the Constitution were defined, especially with reference to the Basque people.

51. Lord COLVILLE noted that the International Covenant on Civil and Political Rights had clearly become part of the legislation of Spain, but so had the European Convention on Human Rights. In that regard, he asked the representative of Spain to discuss whether there had ever been a conflict in the Spanish courts between the International Covenant and the European Convention, and which instrument prevailed in such cases.

52. Mr. FRANCIS endorsed the emphasis on the need to introduce educational programmes to combat racial discrimination and said that community outreach programmes had been very useful in attempts to cope with such problems in many countries.

The meeting rose at 6 p.m.